

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED

SEP 09 2005


CLERK

ORRIE HARRY CHARGER,
Plaintiff,

CIV. 05-3004

-vs-

ORDER AND OPINION

ST. JOSEPH INDIAN SCHOOL,
PRIESTS OF THE SACRED HEART,
SISTER JOSEPH, BROTHER
MATHIAS, PREFECT JOHN, and THE
UNITED STATES OF AMERICA, and
the Secretary of the Department of the
Interior, Bureau of Indian Affairs,

Defendants.

This action was filed on January 18, 2005, and all summonses were issued that day. No proof of service as to any defendant has been filed. No defendant other than the United States has answered or appeared which is also an indication that no service of process has been accomplished as to all defendants other than the United States. On July 29, 2005, the attorney for plaintiff filed a motion (Doc. 11) for leave to withdraw as the attorney for the plaintiff. The United States filed a motion on August 12, 2005, to dismiss the action (Doc. 12) with a supporting memorandum of law (Doc. 13).

The court could have previously *sua sponte* dismissed this lawsuit for failure to comply with Fed.R.Civ.P. 4(m) since the 120 days would have passed on April 14, 2005. The court gave notice to the attorney for the plaintiff on August 15, 2005, (Doc. 14) that if the service problems were not resolved by September 8, 2005, the court would dismiss this lawsuit without prejudice. The attorney for plaintiff provided such notice to the plaintiff personally so that the plaintiff was personally aware of all deadlines.

The attorney for the plaintiff complied with the directives of the court set forth in the memorandum of August 15, 2005, giving all required notices to the plaintiff personally. The plaintiff has not responded and the time to do so has expired. The attorney filed a second motion to withdraw as counsel (Doc. 15).

No proof of service has been filed.

The action should be dismissed, thus mooting the pending motions.

Now, therefore,

IT IS ORDERED, as follows:

- 1) This action is dismissed without prejudice and without the taxation of costs.
- 2) The motion to dismiss (Doc. 12) is denied as moot.
- 3) The motions to withdraw (Docs. 11 and 15) are denied as moot.

Dated this 9th day of September, 2005.

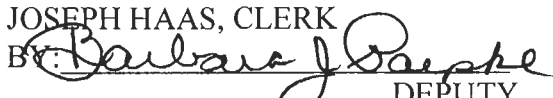
BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:


DEPUTY
(SEAL)